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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,251	03/19/2004	Robert Allen Moss	MOSS-1 CONT.	7494
1473	7590	07/26/2004	EXAMINER	
FISH & NEAVE 1251 AVENUE OF THE AMERICAS 50TH FLOOR NEW YORK, NY 10020-1105			CHAMBERS, MICHAEL S	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/804,251

Applicant(s)

MOSS ET AL.

Examiner

Mike Chambers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-21 and 23 is/are rejected.
- 7) ☒ Claim(s) 12-13 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/19/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term “shaft” in claims 1-22 are used by the claim to mean “any type of elongated member with a length”, while the accepted meaning is “a circular rigid member”. The following generic definition shows that a shaft is normally considered a circular rigid member:

Main Entry: **shaft**

Function: *noun*

1 **a** (1) : the long handle of a spear or similar weapon (2) : SPEAR, LANCE

b : POLE; *specifically* : either of two long pieces of wood between which a horse is hitched to a vehicle

c (1) : an arrow especially for a longbow (2) : the body or stem of an arrow extending from the nock to the head

2 : a sharply delineated beam of light shining through an opening

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3 : something suggestive of the shaft of a spear or arrow especially in long slender cylindrical form: as

a : the trunk of a tree

b : the cylindrical pillar between the capital and the base

c : the handle of a tool or instrument (as a golf club)

d : a commonly cylindrical bar used to support rotating pieces or to transmit power or motion by rotation

e : the stem or central axis of a feather

f : the upright member of a cross especially below the arms

g : a small architectural column (as at each side of a doorway)

h : a column, obelisk, or other spire-shaped or columnar monument

i : a vertical or inclined opening of uniform and limited cross section made for finding or mining ore, raising water, or ventilating underground workings (as in a cave)

j : a vertical opening or passage through the floors of a building

4 a : a projectile thrown like a spear or shot like an arrow **b** : a scornful, satirical, or pithily critical remark or attack **c** : harsh or unfair treatment -- usually used with *the*

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6,14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tipple et al. Tipple et al discloses a

first and second releasable fasteners (fig 2), wherein the first releasable fastener (38) is coupled to the first shaft and the second releasable fastener (40) is coupled to the second shaft .

As to claim 2: Tipple et al discloses first and the second shafts are aligned substantially away from each other (fig 2).

As to claim 3: Tipple et al discloses first and the second rope (fig 2, items 24,42).

As to claim 4: Tipple et al discloses a ball mounting device (fig 2). The device is capable of mounting a ball.

As to claim 5: Tipple et al discloses a first and second ends of a rope (fig 2).

As to claim 6: Tipple et al discloses a ball releasable device (fig 2).

As to claim 14: Tipple et al discloses a tether (fig 1, item 18).

As to claim 15: Tipple et al discloses a tether that is adjustable in length (fig 1, item 46,50, 3:40-50).

Also,

Claims 1-6,14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Larkin et al. Larkin et al discloses a

first and second releasable fasteners (fig 1), wherein the first releasable fastener (20) is coupled to the first shaft (12) and the second releasable fastener (18) is coupled to the second shaft (11).

As to claim 2: Larkin et al discloses first and the second shafts are aligned substantially away from each other (fig 1).

As to claim 3: Larkin et al discloses first and the second rope (fig 1, items 11,12).

As to claim 4: Larkin et al discloses a ball mounting device (fig 1, 16).

As to claim 5: Larkin et al discloses a first and second ends of a rope (fig 1, 11,12).

As to claim 6: Larkin et al discloses a ball releasable device (fig 1).

As to claim 14: Larkin et al discloses a tether (fig 1, item 13).

As to claim 15: Larkin et al discloses a tether that is adjustable in length (fig 1, item 13 can be tied in a knot).

Also,

Claims 1-6,14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Maina. Maina discloses a

first and second releasable fasteners (52,12, fig 1 ,3), wherein the first releasable fastener is coupled to the first shaft (30) and the second releasable fastener is coupled to the second shaft (un-numbered cord attached to item 52) and wherein the first and the second releasable fasteners are configured for releasable mounting of a ball.

As to claim 2: Maina discloses first and the second shafts are aligned substantially away from each other (fig 1).

As to claim 3: Maina discloses first and the second rope (fig 1).

As to claim 4: Maina discloses a ball mounting device (fig 3).

As to claim 5: Maina discloses a first and second ends of a rope (fig 1).

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As to claim 6: Maina discloses a ball releasable device (fig 3, if only two strips are used, the ball will release if hit.).

As to claim 14: Maina discloses a tether (fig 1, item 56).

As to claim 15: Maina discloses a tether that is adjustable in length (fig 1, item 30).

Also,

Claims 1-6,8 10,11, and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Myers . Myers discloses a

first and second releasable fasteners (fig 1), wherein the first releasable fastener is coupled to the first shaft (fig 1 left hand section of ball attachment 21) and the second releasable fastener is coupled to the second shaft (fig 1 right hand section of ball attachment 46) and wherein the first and the second releasable fasteners are configured for releasable mounting of a ball.

As to claim 2: Myers discloses first and the second shafts are aligned substantially away from each other (fig 1).

As to claim 3: Myers discloses a rope (fig 1, 1:63-65).

As to claim 4: Myers discloses a ball mounting device (21,46).

As to claim 5: Myers discloses a first and second ends of a rope (fig 1).

As to claim 6: Myers discloses a ball releasable device (fig 1, 2:64-68).

As to claim 8: Myers discloses a racket (abstract line 4).

As to claim 10: Myers discloses a first and second releasable fastener (fig 1, item 46).

As to claim 11: Myers discloses hook and pile fasteners (fig 1,2:64-68)

As to claim 14: Myers discloses a tether (20).

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As to claim 15: Myers discloses a tether that is adjustable in length (fig 3, item 55).

As to claim 16: Myers discloses a rope (3:39-40).

As to claim 17: Myers discloses a rigid member (fig 1, item 15).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Myers.

No novelty is seen in the type of ball selected. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed any one of several equivalent types of balls including a baseball with the apparatus of Myers in order to increase the potential sales of the device.

Also,

Claims 1-4, 6-9, and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culpepper in view of Haskett. Culpepper discloses the elements of claim 1, however it fails to clearly disclose the use of a releasable mounting of a ball. Haskett discloses the use of a releasable mounting of a ball (fig 6, 2:61-68). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the releasable mounting of Haskett with the apparatus of Culpepper in order to permit the player easily change the type of ball used and to permit the user to see how far they can hit the ball during practice.

As to claim 2: Culpepper discloses first and the second shafts are aligned substantially away from each other (fig 1).

As to claim 3: Culpepper discloses a rod and rope (13,23, fig 1).

As to claim 4: Culpepper discloses a first and second shaft (fig 1).

As to claim 6: Haskett discloses a ball releasable device (fig 6). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the releasable mounting of Haskett with the apparatus of Culpepper in order to permit the player easily change the type of ball used and to permit the user to see how far they can hit the ball during practice.

As to claim 7: Haskett discloses a baseball (1:10-11). It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed any one of several equivalent types of balls including a baseball with the apparatus of Culpepper in order to increase the potential sales of the device.

As to claim 8: Culpepper discloses a bat (1:10-13).

As to claim 9: Culpepper discloses a first and second tubular members (fig 1, item 25 has two fasteners).

As to claim 14: Culpepper discloses a tether (fig 1).

As to claim 15: Culpepper discloses a tether that is adjustable in length (fig 1, the tether could be adjustable by tying a knot in the tether).

As to claim 16: Culpepper discloses a cord (2:54-55).

As to claim 17: Culpepper discloses a rigid member (fig 1, item 13).

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As to claims 18 and 19 : Culpepper discloses a hinge (fig 1, item 17, The un-numbered attachment device on item 17 that secures item 13 permits the device to rotate).

As to claims 20 and 21: Culpepper discloses a releasable tether (fig 1, the rope tether could be cut or would tear when the tension is greater than a threshold tension).

As to claims 23: See claim 1 rejection.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,14-19, and 23 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 59 of copending Application No. 09/627,146 in view of Keller (4191372). Keller discloses a releasable fastener coupled to the second (4:24-27). It would have been obvious to one of ordinary to have utilized a second releasable fastener in order to easily adjust the height of the ball for each user.

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

Claims 12-13, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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July 23, 2004


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